U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

MEMORANDUM

DATE:

SUBJECT: Rescinded Documentation of Concurrence with the Preparation of an Engineering Evaluation/Cost Analysis of a CERCLA Non-Time Critical Removal Action at the Pierson's Creek Superfund Site in Newark, New Jersey

FROM: Pamela Tames, Remedial Project Manager
Central New York Remediation Section
PAMELA TAMES Digitally signed by PAMELA TAMES Date: 2021.09.09 11:04:56 -04'00'

THRU: Michael Sivak, Chief
Passaic, Hackensack, and Newark Bay Remediation Branch
Michael Sivak Digitally signed by Michael Sivak Date: 2021.09.09 11:12:34 -04'00'

To: Pat Evangelista, Director
Superfund and Emergency Management Division

I. PURPOSE

Upon further review of the property following a recent storm, we hereby notify you that we are rescinding the memorandum dated June 25, 2021 in which you concurred with the preparation of an Engineering Evaluation/Cost Analysis (EE/CA) for a non-time critical removal action (NTCRA) at a portion of the Pierson's Creek Superfund site (Site). A time critical removal action (TCRA) will be performed instead. The Site, located in Newark, Essex County, New Jersey, is considered a "facility" as defined by Section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. § 9601(9). The Site is on the National Priorities List.

Historically, Pierson's Creek originated just north of the Troy Chemical Corporation Inc. (Troy) plant property at the Site and then flowed into a concrete channel that bisected the Troy property. A drainage improvement project that was completed in 2007 altered the flow of Pierson's Creek. The Creek (designated as Operable Unit 1 (OU1)) now begins just south of the Troy property (designated as Operable Unit 2 (OU2)) where it receives stormwater runoff from the Wilson Avenue/ Avenue L drainage culvert as well as from an unnamed tributary on the eastern boundary of the Troy property. The Creek continues to flow through a series of open channels and culverts in a general south-southwesterly direction before discharging into the Port Newark Channel of Newark Bay. An unnamed tributary runs between the Troy property and the Oberwil property before it rejoins the open channel of Pierson's Creek to the south. Past industrial activities along Pierson's Creek (including the unnamed tributary) have contaminated it with "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). EPA has initiated a remedial investigation and feasibility study (RI/FS) for OUI. Troy is performing the RI/FS for OU2, pursuant to a November 2017 administrative order on consent with EPA.

Based on the available information, EPA has determined that releases and threatened releases of hazardous substances have occurred on the Oberwil property and that such releases may present an imminent and

substantial danger to the public health, welfare, or the environment. Specifically, based on recent floods from multiple storms we no longer believe we have the six-month planning period allowed by the NTCRA process. Instead, a TCRA is more appropriate to deal with the exigency of the situation. The repeated flooding that has occurred this summer and continues to occur poses a threat to spread the contaminated soil and make the clean up more costly and more difficult as well as threatening to contaminate uncontaminated areas of the site. Therefore, a CERCLA removal action on this property is warranted.

The removal action will prevent risks from direct contact with hazardous substances and minimize the potential for the migration of contaminants. EPA has determined that it is appropriate to use removal authority to conduct an interim response action to achieve immediate risk reduction while the RI/FS is completed and the final remedy for OU1 is selected. The TCRA will address mercury and PCB-contaminated sediments that were excavated from the unnamed tributary and piled up on the Oberwil property and that pose a threat to public health, welfare, and the environment. The TCRA also will minimize contaminant migration to Pierson's Creek. The action taken will be consistent with the provision in CERCLA Section 104(a)(2) requiring removal actions to "contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned." The final remedy for OU1 will address the sediment within Pierson's Creek and its unnamed tributaries.

II. BACKGROUND

The Troy Chemical Company manufactured chemicals at a plant adjacent to Pierson's Creek from 1956 to 1980. The Troy Chemical Co. facility is located adjacent to the Oberwil property. In June 1980, New Chemical Corporation purchased Troy Chemical Company. Shortly after the purchase New Chemical Corporation changed its name to Troy Chemical Corporation. The company currently manufactures antimicrobial and antifungal paint additives at that facility. Between 1956 and 1965, the Troy Chemical Company allegedly discharged untreated mercury-containing wastewater into Pierson's Creek. After 1965, the wastewater was treated at the plant to address the mercury prior to its discharge into the creek. In 1976, a wastewater treatment plant was built on the site. In 2001, EPA reached a settlement with Troy Chemical that required the facility to come into compliance with chemical reporting regulations, make improvements to reduce air and water pollution and decrease the amount of chemicals the company uses in its processes. The New Jersey Department of Environmental Protection has also worked to resolve air and water violations resulting from operations at the plant.

In September 2019, Salomone Brothers, the former prospective buyer of the Oberwil property, constructed drainage and site improvements on the property which included excavating and culverting the southern portion of the unnamed tributary. As a result of this work, soil/sediment, vegetative matter, and other debris were stockpiled for storage in several piles on the northern and eastern sides of the property. A total of three stockpiles containing soil, sediments and other debris removed from the tributary and surrounding area were created on the property. Sample results from previous investigations of the tributary and adjacent soils indicated that these stockpiles likely contain materials that were highly contaminated with hazardous substances including mercury and polychlorinated biphenyls (PCBs). These piles currently remain on the property and should be removed.

The property is in a low-lying area and experiences regular flooding. The flooding of the property has made managing and securing the piles to prevent the material from migrating to the tributary difficult. Therefore, the timeline to remove these piles should be reduced.

The proposed work will focus on these stockpile areas of the Oberwil property.

III. THREAT TO PUBLIC HEALTH, WELFARE, AND THE ENVIRONMENT

The mechanisms for past releases to the environment appear to have been spills and waste disposal practices of facilities located along the Creek. Storm-induced erosion continues to cause the migration of wastes to nearby surface water bodies including Newark Bay.

Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R Part 300, provides factors for determining the appropriateness of a removal action. The factors most applicable to Site conditions include:
• Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants. 40 C.F.R. 300.415(b)(2)(i);
• High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. 40 C.F.R. 300.415(b)(2)(iv);
• Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. 40 C.F.R. 300.415(b)(2)(v);
• There are no other appropriate federal or state response mechanisms currently available to respond to the release. 40 C.F.R. 300.415(b)(2)(vii); and
• Other situations or factors that may pose threats to public health or welfare of the United States or the environment, such as the risks to construction workers or other persons discussed immediately below. 40 C.F.R. 300.415(b)(2)(viii)

Oberwil holds title and plans to sell the property for redevelopment. Without a response action there will be a health risk to construction workers and those persons that work on or near that property. Future releases to the environment could occur through air and surface water migration pathways during construction work.

IV. ENFORCEMENT

Following the events of September 2019 on the Oberwil property, notice letters were issued to both Salomone Brothers and Oberwil on April 20, 2020. Both companies have expressed an interest in cooperating with EPA. In addition, Salomone Brothers has expressed an interest in performing a TCRA on the Oberwil property. EPA will negotiate an agreement for the performance of the TCRA with the companies and will oversee the work. It is anticipated that the EPA will enter into a Settlement Agreement and Order on Consent (AOC) with Oberwil and Salomone Brothers to perform this work.

V. PROJECT COSTS

It is anticipated that the EPA will issue an Action Memorandum and Salomone Brothers and Oberwil will perform the removal action pursuant to the AOC. The potential removal response action for the Oberwil property includes off-site disposal of approximately 1,200 cubic yards of the stockpiled contaminated soils and sediment followed by post-removal sampling at an estimated cost of under $600,000. EPA oversight costs are estimated to be less than $75,000.

VI. RECOMMENDATION

Investigations have determined that there has been a release of hazardous substances to the environment at the Site, and a CERCLA TCRA is needed to prevent a direct contact threat and to minimize the potential for the migration of contaminants. There is only one viable alternative for the soil piles, and that is removal and off-site disposal. The removal work will be performed under EPA oversight.